Remarks

In the present response, claims 1-18 are presented for examination.

Objection: Specification

The disclosure is objected to because of an informality. The first paragraph of the specification is amended to add an application number to a commonly assigned patent application.

Claim Rejections: 35 USC § 112

Claim 11 is rejected under 35 USC § 112, second paragraph, as being indefinite. Claim 11 is amended to cure this rejection.

Claim Rejections: 35 USC § 102(b)

Claims 1-3, 5, and 7-16 are rejected under 35 USC § 102(b) as being anticipated by USPN 6,859,929 (Smorodinsky). These rejections are traversed.

The claims recite one or more elements that are not taught or even suggested in Smorodinsky). Some examples are provided for the independent claims.

As one example, claim 1 recites means for increasing a number of server machines processing transactions for the two scaleable tiers of server machines by allocating spare server machines to process a portion of the transactions.

Smorodinsky does not teach <u>spare</u> server machines that are added to process transactions for two tiers of server machines. Smorodinsky calculates an optimum number of server farms for a given input. In other words, Smorodinsky "designs" a server farm, not adjusts servers in the farm during operation. As such, Smordinsky does not teach the use of or need for "spare" server machines that are added to process transactions.

Anticipation under section 102 can be found only if a single reference shows exactly what is claimed (see *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985)). For at least these reasons, claim 1 and its dependent claims are allowable over Smorodinsky.

As another example, claim 1 recites that the spare server machines are allocated to process a portion of the transactions when the average response time for the server system to respond to the transaction requests is greater than or equal to a specified average response time. In other words, the number of server machines processing transactions changes. The change occurs when the average response time for the server system to respond to the transaction requests is greater than or equal to a specified average response time.

In contrast to claim 1, Smorodinsky teaches a static system that does not change (i.e., increase) the number of machines processing requests. Instead, Smorodinsky designs a server farm by calculating an optimum number of server farms that would be needed for a given input. This optimum number, however, is static and does not change while the system is processing transactions.

For a prior art reference to anticipate under section 102, every element of the claimed invention must be identically shown in a single reference (see *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990)). For at least these reasons, claim 1 and its dependent claims are allowable over Smorodinsky.

As one example, claim 8 recites computing an average time that transaction requests are pending at each of the two tiers. The claim then recites automatically increasing the number of server machines allocated to one of the two tiers when the average time the transaction requests are pending at the one of the two tiers is greater than or equal to a pre-determined limit. Smorodinsky does not teach these elements.

In contrast to claim 8, Smorodinsky teaches a static system that does not change (i.e., increase) the number of machines processing requests. Instead, Smorodinsky designs a server farm by calculating an optimum number of server farms that would be needed for a given input. This optimum number, however, is static and does not change while the system is processing transactions.

Anticipation is established only when a single prior art reference discloses each and every element of a claimed invention united in the same way (see *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984)). For at least these reasons, claim 8 and its dependent claims are allowable over Smorodinsky.

As one example, claim 10 recites automatically increasing, by a server system manager, a number of server machines processing transaction requests at one of two tiers of server machines. This increase occurs at a point in time when the average response time for a transaction request at the one of the two tiers of server machines is greater than or equal to a specified average response time. Smorodinsky does not teach these elements.

In contrast to claim 10, Smorodinsky teaches a static system that does not change (i.e., increase) the number of machines processing requests. Instead, Smorodinsky designs a server farm by calculating an optimum number of server farms that would be needed for a given input. This optimum number, however, is static and does not change while the system is processing transactions.

There can be no difference between the claimed invention and the cited reference, as viewed by a person of ordinary skill in the art (see *Scripps Clinic & Research Foundation v. Genentech Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991)). For at least these reasons, claim 10 and its dependent claims are allowable over Smorodinsky.

As one example, claim 11 recites increasing and decreasing a number of server machines from a pool that process transactions for two tiers of server machines. This increase and decrease occur when average response times for processing transactions at the two tiers of server machines exceed a specified average response time. Smorodinsky does not teach these elements.

In contrast to claim 11, Smorodinsky teaches a static system that does not change (i.e., increase) the number of machines processing requests. Instead, Smorodinsky designs a server farm by calculating an optimum number of server farms that would be needed for a given input. This optimum number, however, is static and does not change while the system is processing transactions.

There can be no difference between the claimed invention and the cited reference, as viewed by a person of ordinary skill in the art (see *Scripps Clinic & Research Foundation v. Genentech Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991)). For at least these reasons, claim 11 and its dependent claims are allowable over Smorodinsky.

As one example, claim 15 recites automatically increasing a number of server machines processing transactions for each of two tiers of server machines at a point in

time when an average time that transactions requests are pending at the two tiers of server
machines exceeds a threshold. Smorodinsky does not teach these elements.

In contrast to claim 15, Smorodinsky teaches a static system that does not change
(i.e., increase) the number of machines processing requests. Instead, Smorodinsky
designs a server farm by calculating an optimum number of server farms that would be
needed for a given input. This optimum number, however, is static and does not change
while the system is processing transactions.

Anticipation is established only when a single prior art reference discloses each
and every element of a claimed invention united in the same way (see *RCA Corp. v.
Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984)). For at least
these reasons, claim 15 and its dependent claims are allowable over Smorodinsky.

Claim Rejections: 35 USC § 103(a)

Claims 6 and 7 are rejected under 35 USC § 103(a) as being unpatentable over
USPN 6,859,929 (Smorodinsky) in view of USPN 6,816,905 (Sheets). These rejections
are traversed.

As shown above, Smorodinsky fails to teach or suggest all the elements of
independent claim 1. Sheets fails to cure these deficiencies. Thus, for at least the reasons
providd with respect to independent claim 1, dependent claims 6 and 7 are allowable over
Smorodinsky in view of Sheets.

CONCLUSION

In view of the above, Applicants believe that all pending claims are in condition for allowance. Allowance of these claims is respectfully requested.

Any inquiry regarding this Amendment and Response should be directed to Philip S. Lyren at Telephone No. 832-236-5529. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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